

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**BARKAN WIRELESS IP HOLDINGS,
L.P.,**

Plaintiff,

v.

**SPRINT COMMUNICATIONS CO., L.P.,
SPRINT SOLUTIONS, INC., and SPRINT
SPECTRUM L.P.,**

Defendants.

Civil Action No. 2:19-cv-00336-JRG

JURY TRIAL DEMANDED

**JOINT MOTION FOR JUDGMENT AND DISMISSAL OF CERTAIN CLAIMS BASED
ON THE CLAIM CONSTRUCTION ORDER**

Plaintiff Barkan Wireless IP Holdings, L.P. (“Barkan”) and Defendants Sprint Communications Co. L.P., Sprint Solutions, Inc., and Sprint Spectrum L.P. (“Sprint”) submit this joint motion for entry of judgment and dismissal of certain claims in this action, subject to Barkan’s right to appeal after a final judgment is entered as to the *other* claims asserted in this action, trial of which is scheduled for April 5, 2021.

Based on the October 26, 2020 claim construction order adopted by this Court on December 8, 2020, and subject to its right to appeal the Court’s claim construction order and entry of final judgment, Barkan stipulates to entry of judgment of non-infringement of Claim 13 of U.S. Patent No. 8,559,312 (the “’312 Patent”) and Claims 1-4, 7-12, 15, 16, 18, 19, 28, and 29 of U.S. Patent No. 9,392,638 (the “’638 Patent”) (collectively, the “Stipulation Claims”).

In support of this motion, the parties state as follows:

1. In the October 26, 2020 claim construction order adopted by this Court, the Court adopted Sprint's proposed construction of "tamper-free unit/hardware" to mean a unit/hardware that "includes means to destroy its contents or delete information stored therein, if someone tries to tamper with it." Under this construction, and based on Sprint's discovery responses as to the Accused Products' non-infringement as to this term, Claim 13 of the '312 Patent, and Claims 1-4, 7-12, 15, 16, 18, 19, 28, and 29 of the '638 Patent, are not infringed by the Accused Products.
2. Entering a judgment of non-infringement subject to the reservation of appellate rights is a well-accepted practice. *See, e.g., Mass Inst. of Tech. & Elecs. For Imaging, Inc. v. Abacus Software*, 462 F.3d 1344, 1351 (Fed. Cir. 2006) ("[T]he parties 'stipulate[d] to entry of final judgment of non-infringement of the [Patents] based on the Court's claim construction. . . .' We have jurisdiction under 28 U.S.C. § 1295(a)(1)." (first alteration added)). Barkan's non-infringement stipulation is based on the Court's construction of the terms "tamper-free unit" and "tamper-free hardware."
3. The parties' stipulation, this motion, and any resulting order are without prejudice to the parties' ability to challenge on appeal any aspect of the claim construction order and any eventual final judgment, and without prejudice to the parties' ability to advocate on appeal any alternative grounds supporting any aspect of an eventual final judgment.

Dated: January 11, 2021

Respectfully Submitted,

/s/ Max L. Tribble, Jr.

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CERTIFICATE OF CONFERENCE

I certify that counsel for Plaintiff conferred with counsel for Defendants and this motion is Joint.

/s/ William D. O'Connell
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